

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

WILLIAM GENE CARTER,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:04CV1454 HEA
)	
SHERRY BUHLER, (SA),)	
RACHEL WORWRICK, (SA),)	
LARRY MAJORS, (SA),)	
STEVE HOLLINGER, (SA),)	
ALAN BLAKE, C.O.O.,)	
)	
Defendants.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's "Motion for Default and Motion for Default Judgment Per F.R.C.P. 55" [Doc. #22] and "Secondary Motion for Entry of Default and Motion for Default Judgment Per F.R.C.P. 55" [Doc. #23]. Defendants have not responded to the motions.

Plaintiff alleges that Defendants have failed to file a response to Plaintiff's Complaint within 20 days after being served, in violation of Rule 12(a)(1)(A) of the Federal Rules of Civil Procedure. Plaintiff therefore claims he is entitled to a default judgment pursuant to Rule 55 of the Federal Rules of Civil procedure. Rule 55 provides as follows:

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

FED. R. CIV. P. 55(a). Judgment may also be entered by the Court. *See* FED. R. CIV. P. 55(b)(2).

The record reflects that service was effectuated upon Defendants on February 25, 2005. Eleven days later, on March 8, 2005, Defendants filed their Answer to Plaintiff's Complaint and also filed a Motion to Dismiss Plaintiff's claims under 42 U.S.C. § 1981. The Court, therefore, finds that Defendants have timely filed their responsive pleadings pursuant to Rule 12(a)(1)(A) and have defended themselves in accordance with Rule 55.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion for Default and Motion for Default Judgment Per F.R.C.P. 55 [Doc. #22] is denied;

IT IS FURTHER ORDERED that Plaintiff's Secondary Motion for Entry of Default and Motion for Default Judgment Per F.R.C.P. 55 [Doc. #23] is denied.

Dated this 11th day of August, 2005.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT COURT